

AMENDED IN ASSEMBLY APRIL 13, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 493

Introduced by Assembly Member Frommer

February 16, 2005

An act to amend Section 742.24 of, *and to add Section 742.245 to*, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 493, as amended, Frommer. Multiple employer welfare arrangements: investments.

Existing law allows creation of multiple employer welfare arrangements (MEWAs) to allow employer members or trade associations to create trust funds for the purpose of providing health care benefits to their employees or members. Under existing law, a MEWA ~~may invest specified funds in an open-ended diversified management company, as defined, meeting designated requirements is required to comply with specified investment requirements.~~

This bill would ~~specify that these investments of the open-ended diversified management company may consist in whole or in part of common and preferred stocks. The bill would additionally allow investment of other funds of a MEWA in an open-ended diversified management company in debt instruments or cash revise the requirements for the investment of the assets of a MEWA.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 742.24 of the Insurance Code is amended to read:

742.24. To be eligible for a certificate of compliance, a self-funded or partially self-funded multiple employer welfare arrangement shall meet all of the following requirements:

(a) Be nonprofit.

(b) Be established and maintained by a trade association, industry association, professional association, or by any other business group or association of any kind that has a constitution or bylaws specifically stating its purpose, and have been organized and maintained in good faith with at least 200 paid members and operated actively for a continuous period of five years, for purposes other than that of obtaining or providing health care coverage benefits to its members. An association is a California mutual benefit corporation comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, which do not condition membership directly or indirectly on the health or claims history of any person, and which uses membership dues solely for and in consideration of the membership and membership benefits.

(c) Be organized and maintained in good faith with at least 2,000 employees and 50 paid employer members and operated actively for a continuous period of five years.

(d) Have been operating in compliance with ERISA on a self-funded or partially self-funded basis for a continuous period of five years pursuant to a trust agreement by a board of trustees that shall have complete fiscal control over the multiple employer welfare arrangement, and that shall be responsible for all operations of the multiple employer welfare arrangement. The trustees shall be selected by vote of the participating employers and shall be owners, partners, officers, directors, or employees of one or more employers participating in the multiple employer welfare arrangement. A trustee may not be an owner, officer, or employee of the insurer, administrator, or service company providing insurance or insurance-related services to the association. The trustees shall have authority to approve

1 applications of association members for participation in the
2 multiple employer welfare arrangement and to contract with an
3 authorized administrator or service company to administer the
4 day-to-day affairs of the multiple employer welfare arrangement.

5 (e) Benefits shall be offered only to association members.

6 (f) Benefits may be offered only through life agents, as
7 defined in Section 1622, licensed in the state whose names,
8 addresses, and telephone numbers have been filed with the
9 commissioner as licensed life agents for the multiple employer
10 welfare arrangement.

11 (g) Be operated in accordance with sound actuarial principles
12 and conform to the requirements of Section 742.31.

13 (h) File an application with the department for a certificate of
14 compliance no later than November 30, 1995.

15 (i) The multiple employer welfare arrangement shall at all
16 times maintain aggregate stop loss insurance providing the
17 arrangement with coverage with an attachment point which is not
18 greater than 125 percent of annual expected claims. The
19 commissioner may, by regulation, define "expected claims" for
20 purposes of this subdivision and provide for adjustments in the
21 amount of the percentage in specified circumstances in which the
22 arrangement specifically provides for and maintains reserves in
23 accordance with sound actuarial principles as provided in Section
24 742.31.

25 (j) The multiple employer welfare arrangement shall establish
26 and maintain specific stop loss insurance providing the
27 arrangement with coverage with an attachment point that is not
28 greater than 5 percent of annual expected claims. The
29 commissioner may, by regulation, define "expected claims" for
30 purposes of this subdivision and provide for adjustments in the
31 amount of that percentage as may be necessary to carry out the
32 purposes of this subdivision determined by sound actuarial
33 principles as provided in Section 742.31.

34 (k) The multiple employer welfare arrangement shall establish
35 and maintain appropriate loss and loss adjustment reserves
36 determined by sound actuarial principles as provided in Section
37 742.31.

38 (l) The association has within its own organization adequate
39 facilities and competent personnel to serve the multiple employer

1 welfare arrangement, or has contracted with a licensed
2 third-party administrator to provide those services.

3 (m) The association has established a procedure for handling
4 claims for benefits in the event of the dissolution of the multiple
5 employer welfare arrangement.

6 (n) On and after January 1, 2003, in addition to the
7 requirements of this article, maintain a surplus of not less than
8 one million dollars (\$1,000,000), and that this amount be
9 increased as follows: one million seven hundred fifty thousand
10 dollars (\$1,750,000) by January 1, 2004; two million five
11 hundred thousand dollars (\$2,500,000) by January 1, 2005; three
12 million two hundred fifty thousand dollars (\$3,250,000) by
13 January 1, 2006; and four million dollars (\$4,000,000) by
14 January 1, 2007.

15 (o) Submit all proposed rate levels to the department for
16 informational purposes no later than 45 days prior to their
17 implementation. The proposed rates shall contain an aggregate
18 benefit structure which has a loss ratio experience of not less than
19 80 percent. The loss ratio experience shall be calculated as claims
20 paid during the contract period plus a reasonable estimate of
21 claims liability for the contract period at the end of the current
22 year divided by contributions paid or collected for the contract
23 period minus unearned contributions at the end of the current
24 year.

25 ~~(p) (1) Comply with the investment requirements of Article 3~~
26 ~~(commencing with Section 1170) of Chapter 2 of Part 2 of~~
27 ~~Division 1 and Section 1192.5, except for investments made~~
28 ~~pursuant to paragraphs (2) and (3):~~

29 ~~(2) (A) A multiple employer welfare arrangement may invest~~
30 ~~funds as provided in subparagraph (B) in an amount not to~~
31 ~~exceed 75 percent of any excess of invested assets over the sum~~
32 ~~of the following:~~

33 ~~(i) The reserves and related actuarial items held in support of~~
34 ~~policies and contracts:~~

35 ~~(ii) The surplus required by subdivision (n):~~

36 ~~(B) The investments authorized by subparagraph (A) may be~~
37 ~~made only in an open-ended diversified management company,~~
38 ~~as defined in the federal Investment Company Act of 1940 (15~~
39 ~~U.S.C. 80a-1 et seq.), that meets all of the following~~
40 ~~requirements:~~

1 ~~(i) Is registered with, and reports to, the Securities and~~
2 ~~Exchange Commission.~~

3 ~~(ii) Is domiciled in the United States.~~

4 ~~(iii) Its investments consist in whole or in part of common and~~
5 ~~preferred stocks.~~

6 ~~(iv) All of its assets are held in the United States by a bank,~~
7 ~~trust company, or other custodian chartered by the United States~~
8 ~~or its territories or states.~~

9 ~~(3) A multiple employer welfare arrangement may invest those~~
10 ~~funds that are not included in the funds described in paragraph~~
11 ~~(2) only in an open-ended diversified management company, as~~
12 ~~defined in the federal Investment Company Act of 1940 (15~~
13 ~~U.S.C. 80a-1 et seq.), that meets all of the following~~
14 ~~requirements:~~

15 ~~(A) Is registered with, and reports to, the Securities and~~
16 ~~Exchange Commission.~~

17 ~~(B) Is domiciled in the United States.~~

18 ~~(C) Its investments consist in whole or in part of debt~~
19 ~~instruments or cash.~~

20 ~~(D) All of its assets are held in the United States by a bank,~~
21 ~~trust company, or other custodian chartered by the United States~~
22 ~~or its territories or state.~~

23 ~~(4) The commissioner may, in his or her discretion and after a~~
24 ~~hearing, require by written order the disposal of any investment~~
25 ~~made in violation of this section. The commissioner may also,~~
26 ~~after a hearing, require the disposal of any investment made~~
27 ~~pursuant to paragraph (2) if the multiple employer welfare~~
28 ~~arrangement has failed to maintain cash or liquid assets sufficient~~
29 ~~to meet its claims and any other contractual obligations.~~

30 ~~(p) Comply with the investment requirements of Section~~
31 ~~724.245.~~

32 *SEC. 2. Section 742.245 is added to the Insurance Code, to*
33 *read:*

34 *742.245. (a) A self-funded or partially self-funded multiple*
35 *employer welfare arrangement shall maintain at least 25 percent*
36 *of the surplus required by subdivision (n) of Section 742.24 in*
37 *investments specified in Article 3 (commencing with Section*
38 *1170) of Chapter 2 of Part 2 of Division 1 and in Section 1192.5.*

1 **(b)** *The balance of the assets of a self-funded or partially*
2 *self-funded multiple employer welfare arrangement may be*
3 *invested in the following:*

4 **(1)** *An open-ended diversified management company, as*
5 *defined in the federal Investment Company Act of 1940 (15*
6 *U.S.C. 80a-1 et seq.), that meets all of the following*
7 *requirements:*

8 **(A)** *It is registered with, and reports to, the Securities and*
9 *Exchange Commission.*

10 **(B)** *It is domiciled in the United States.*

11 **(C)** *Its investments consist of debt instruments and cash.*

12 **(D)** *All of its assets are held in the United States by a bank,*
13 *trust company, or other custodian chartered by the United States,*
14 *its states, or territories.*

15 **(2)** *An amount not to exceed 75 percent of any excess of*
16 *invested assets over the sum of the reserves and related actuarial*
17 *items held in support of policies and contracts, plus the surplus*
18 *required by subdivision (n) of Section 742.24, may be invested in*
19 *the following:*

20 **(A)** *An open-ended diversified management company, as*
21 *defined in the federal Investment Company Act of 1940 (15*
22 *U.S.C. 80a-1 et seq.), that meets all of the following*
23 *requirements:*

24 **(i)** *It is registered with, and reports to, the Securities and*
25 *Exchange Commission.*

26 **(ii)** *It is domiciled in the United States.*

27 **(iii)** *Its investments consist of common and preferred stocks*
28 *and cash.*

29 **(iv)** *All of its assets are held in the United States by a bank,*
30 *trust company, or other custodian chartered by the United States,*
31 *its states, or territories.*

32 **(B)** *Corporate notes, bonds, and preferred stocks that meet all*
33 *of the following requirements:*

34 **(i)** *The issuer is domiciled in the United States or Canada.*

35 **(ii)** *The investments are rated investment grade or better by at*
36 *least two of the following rating agencies, or their successors:*

37 **(I)** *Standard & Poor's.*

38 **(II)** *Moody's.*

39 **(III)** *Fitch.*

1 (iii) *The investments are exchange-traded. "Exchange-traded"*
2 *as used in this clause means listed and traded on the National*
3 *Market System of the NASDAQ Stock Market or on a securities*
4 *exchange subject to regulation, supervision, or control under a*
5 *statute of the United States and acceptable to the commissioner.*

6 (C) *An investment in a single issuer made pursuant to*
7 *subparagraph (B) shall not exceed in the aggregate 10 percent of*
8 *the multiple employer welfare arrangement's funds described in*
9 *this paragraph.*

10 (3) *An investment made pursuant to paragraph (1) or*
11 *subparagraph (A) of paragraph (2) shall be made in, at*
12 *minimum, two of the companies described in those provisions.*

13 (c) *The commissioner may, in his or her discretion and after a*
14 *hearing, require by written order disposal of an investment made*
15 *either in violation of, or no longer in compliance with, this*
16 *section. The commissioner may also, after a hearing, require the*
17 *disposal of any investment made pursuant to paragraph (2) of*
18 *subdivision (b) if the multiple employer welfare arrangement has*
19 *failed to maintain cash or liquid assets sufficient to meet its*
20 *claims and any other contractual obligations. The commissioner*
21 *may also for good cause and after a hearing, by written order*
22 *require the disposal of an investment described in subdivision*
23 *(b).*